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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street, N.W.
BCIS, AAO, 20 MASS, 3/Fr
Washington, D.C. 20536

PUBLIC COPY

[redacted]

JUL 03 2003

File: [redacted] Office: California Service Center Date:
(WAC 02 240 50987 relates)

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for Alien Fiancé(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now on appeal before the Administrative Appeals Office. The appeal will be dismissed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of the Philippines, as the fiancée of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

The director denied the petition after determining that the petitioner and the beneficiary had not personally met within two years before the date of filing the petition, as required by section 214(d) of the Act. In reaching this conclusion, the director found that the petitioner's failure to comply with the statutory requirement was not the result of extreme hardship to the petitioner or unique circumstances.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K), defines "fiancé(e)" as:

> An alien who is the fiancée or fiancé of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after entry . . ..

Section 214(d) of the Act, 8 U.S.C. § 1184(d), states in pertinent part that a fiancé(e) petition:

> . . .shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties *have previously met in person within two years before the date of filing the petition*, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival . . . .[emphasis added]

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with the Service on July 23, 2002. Therefore, the petitioner and the beneficiary were required to have met during the period that began on July 23, 2000 and ended on July 23, 2002.

In response to Question #19 on the Form I-129F, the petitioner indicated that he and the beneficiary had never personally met but had corresponded for six months through e-mail, letters, and telephone calls. He requested a waiver of the two-year meeting requirement for financial reasons and because he felt it would be unsafe for him to travel overseas due to terrorism.

[redacted]

On appeal, the petitioner explains that he and the beneficiary were married in the Philippines subsequent to the filing of the instant petition. He also submits evidence that he filed a Form I-130, Petition for Alien Relative (receipt number MSC 03 091 61847), and a second Form I-129F (receipt number WAC 03 071 40435) on behalf of the beneficiary on December 30, 2002.

It appears that the petitioner is now seeking to classify the beneficiary, now his spouse, as a nonimmigrant pending the availability of an immigrant visa pursuant to section 101(a)(15)(K)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K)(ii). Since the beneficiary no longer qualifies as a fiancée of a United States citizen, the appeal will be dismissed.

Subsection 1103(a) of the Legal Immigration Family Equity Act (LIFE Act), Public Law 106-553 (2000), amended section 101(a)(15)(K) of the Act to include a nonimmigrant classification for the spouse of a United States citizen. In order to qualify for a K-3 nonimmigrant classification, the beneficiary must first be married to a United States citizen who has filed an immediate relative visa petition on behalf of the alien. The spouse must be seeking to enter the United States to wait for "the availability of an immigrant visa." The LIFE Act was enacted on December 21, 2000, and the related regulations were published as an interim rule on August 14, 2001. *See* 66 Fed. Reg. 42587 (2001)(codified at 8 C.F.R. § 214.2).

The denial of the instant petition and the dismissal of its appeal have no effect on the subsequent petitions filed by the petitioner on behalf of his spouse to qualify her as a K-3 nonimmigrant.

ORDER: The appeal is dismissed.